TEAM ACT/Alternative Provisions

SUBJECT: **Teamwork for Employees and Management (TEAM) Act of 1995 . . . S. 295. Dorgan modified amendment No. 4437.**

ACTION: AMENDMENT REJECTED, 36-63

SYNOPSIS: As reported, S. 295, the Teamwork for Employees and Management (TEAM) Act of 1995, will amend the National Labor Relations Act (NLRA) to clarify that an employer may establish and participate in worker-management cooperative organizations to address matters of mutual interest to employers and employees. Such organizations will not be permitted to enter into or to negotiate collective bargaining agreements, or to amend existing agreements. The bill will not affect an employee's right to choose an independent union to engage in collective bargaining.

The Dorgan modified perfecting amendment would strike all after the first word and would insert alternate provisions. The Dorgan amendment would amend section 8(a)(2) of the National Labor Relations Act (NLRA). That 60-year-old section, due to recent National Labor Relations Board (NLRB) rulings, greatly restricts the right of nonunionized workers and employers to discuss health, safety, and other issues of mutual interest. Under the NLRA, particularly as it has been recently interpreted, only unions have full rights to discuss those issues with employers (unionized employees, who comprise 12 percent of the private-sector workforce, may discuss issues of mutual interest with their employers to the extent that their unions give them permission). The Dorgan amendment would permit the following three activities for nonunionized employees under section 8(a)(2):

- an employer could meet with employees in a group or individually "to share information, to brainstorm, or (to) receive suggestions or opinions from individual employees with respect to matters of mutual interest, including matters of working conditions;"
- an employer could assign employees to work units that would hold regular meetings to discuss matters relating to the work responsibilities of that unit, and those meetings could "on occasion" include discussions on working conditions; and
- an employer could establish an employee committee that would hold regular meetings to make recommendations on ways to improve the quality of, or method of producing and distributing, the employer's product or service, and those meetings could "on

(See other side)

YEAS (36)

Republicans (0 or 0%)	Democrats (36 or 77%)	
	Akaka	Harkin
	Baucus	Inouye
	Biden	Johnston
	Boxer	Kennedy
	Bradley	Kerry
	Breaux	Kohl
	Bryan	Levin
	Bumpers	Mikulski
	Byrd	Moynihan
	Conrad	Pell
	Daschle	Pryor
	Dodd	Reid
	Dorgan	Robb
	Exon	Rockefeller
	Feinstein	Sarbanes
	Ford	Simon
	Glenn	Wellstone
	Graham	Wyden

NAYS (63)

Republicans (52 or 100%)		Democrats (11 or 23%)
Abraham	Hutchison	Bingaman
Ashcroft	Inhofe	Feingold
Bennett	Jeffords	Heflin
Bond	Kassebaum	Hollings
Brown	Kempthorne	Kerrey
Burns	Kyl	Lautenberg
Campbell	Lott	Leahy
Chafee	Lugar	Lieberman
Coats	Mack	Moseley-Braun
Cohen	McCain	Murray
Coverdell	McConnell	Nunn
Craig	Murkowski	
D'Amato	Nickles	
DeWine	Pressler	
Domenici	Roth	
Faircloth	Santorum	
Frahm	Shelby	
Frist	Simpson	
Gorton	Smith	
Gramm	Snowe	
Grams	Specter	
Grassley	Stevens	
Gregg	Thomas	
Hatch	Thompson	
Hatfield	Thurmond	
Helms	Warner	

NOT VOTING (1)

Republicans (1)	Democrats (0)
Cochran-[2]	

EXPLANATION OF ABSENCE:
1—Official Buisiness
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

occasion" include discussions related to working conditions.

Employers and employees would not be allowed to engage in or to change these activities during any attempt to unionize employees, and employers would not be allowed to take any action against an employee with respect to that employee's participation or nonparticipation in any discussion on working conditions.

NOTE: The Dorgan amendment was originally offered as a substitute amendment. Senator Kassebaum then offered a perfecting amendment that struck all after the first word and substituted alternate provisions. The Dorgan amendment was then modified to make it a perfecting amendment also by striking all after the first word. Unanimous consent was needed to change the amendment to a perfecting amendment.

Those favoring the amendment contended:

The Dorgan amendment offers a middle ground. Senators who support teamwork but oppose union-busting activities should accept this amendment as a fair compromise. It would allow some peripheral discussions of workplace conditions, but only under carefully defined conditions. We think it is a fair proposal that deserves Senators' support.

We agree with our colleagues that American businesses need to emphasize teamwork on the job site. In the global economy, United States' businesses must compete against products built in countries without child labor laws, without environmental regulations, and without workplace safety standards. In order to overcome these unfair advantages and produce the same quality or better goods at a cheaper price, American businesses must constantly strive for ways to improve their operations. In recent years, they have had great success in doing so by seeking the advice of their workers. The people on the assembly lines, or designing the circuit boards, or doing any other task great or small in producing a good or service understand in detail how to improve production, and when their input is sought costs fall and quality rises. We should encourage businesses to continue to seek the advice of their workers.

At the same time, however, we should make certain that businesses do not use the excuse of seeking the advice of their workers as a disguise for efforts to suppress their rights. Section 8(a)(2) of the NLRB was enacted 60 years ago to stop the creation of sham, "company" unions. Companies that wanted to oppress their workers, making them work long hours in unsafe conditions for low wages, found that they could create fake unions that they could control that would give just enough minor concessions to stop the formation of real unions. For decades, this law and a general pro-union climate stopped companies from trying to make fake unions. In recent years, though, an anti-union climate has risen and some companies have used that climate as an excuse for creating company unions. Those unions have been disguised as "teams" for increasing productivity. They have been used to discuss such issues as hours of work and safety conditions as a means of controlling those issues outside of a unionized context. The NLRB has rightly found such teams illegal.

We recognize that there is a rather fine line between discussing issues such as workplace safety, that can easily have a large effect on efficiency, and issues that properly belong in collective bargaining. Both companies and workers have an interest in increasing competitiveness, but when the issue is worker benefits and pay, the workers and companies also have competing interests. The Dorgan amendment would provide a clear dividing line between these interests. It would allow nonunionized companies, without restriction, to discuss issues with their workers that did not relate to collective bargaining issues. Also, for issues related to workplace conditions, it would let workers and managers hold discussions as long as those discussions were related to improving productivity. Regular meetings on just those issues would clearly be banned because they would be little more than collective bargaining sessions, but occasional discussions, in a context that is generally related to improving production, would be permitted.

Recent NLRB cases have raised numerous questions on what exactly workers and managers may discuss outside of a union setting. The Dorgan amendment would answer those questions in a manner that would not harm workers' rights to unionize and that would not hurt companies' ability to compete. We urge Senators to support this fair, compromise amendment.

Those opposing the amendment contended:

We are encouraged that some of our colleagues who oppose this bill at least admit that there is a problem with recent NLRB rulings on worker-management cooperation. However, our colleagues' smooth rhetoric in favor of teamwork does not match the reality of their amendment. The Dorgan amendment, if anything, would just make matters worse. Senators who want to pretend to do something while really supporting the destructive status quo should vote in favor of this amendment, but Senators who want real reform should reject it.

Sixty years ago, when section 8(a)(2) was enacted, workers and managers had an adversarial relationship. Managers were not interested in the opinions of their employees. They viewed employees as factors of production, to be used and discarded. Workers, for their part, fought only for what they could get out of a company rather than realizing that if the company prospered it could give them more. Over the past 60 years, managers and workers around the rest of the world, especially after World War II, came to realize that if workers and managers worked together to improve operations they would both benefit. Workers and managers in the United States, belatedly, have come to the same realization. However, in the past couple of decades, as they have fought to catch up with

Europe and Japan in this area, they have been held back by this 1930s-era law. In one case, a company that provided its employees with pencils and access to its books was found guilty of anti-union activities; in another, a company that discussed rules on fighting was found to be in violation of section 8(a)(2); a company that discussed tornado warning procedures was found guilty; a company that discussed providing daycare with its nonunionized employees was found guilty of violating Federal law; yet another company that bought safety goggles for fryer and bailer operators on the suggestion of its employees was found guilty. The United States' competitiveness is being hobbled by this Depression-era law.

The Dorgan amendment would not remedy this situation because it suffers from the dinosaur mentality of "us versus them" that was appropriate in 1930 but that is hopelessly outdated now. It would set up a rigid framework under which employers and employees could discuss, as a peripheral matter, working conditions. As conditions now stand, there is some ambiguity about what may actually be considered. Administrative court cases have provided some guidance, and that guidance basically indicates that no discussions outside of a union setting are permissible, but there is some room for argument. The Dorgan amendment would remove much of the room for argument by basically codifying the court decisions stopping worker-management teams from discussing such issues as the length of lunch breaks or special safety precautions for pregnant women. The Dorgan amendment would only allow the discussion of these issues under very limited, almost secondary circumstances.

Numerous studies have concluded that advances in productivity in recent years have come mainly from suggestions by workers. Workers themselves who are involved in productivity teams report that they are much happier, and see it as much more beneficial for them to work in a cooperative environment. The Dorgan amendment would stop these advances cold. It would only grudgingly allow worker-management teams to operate in nonunion settings under strict guidelines that would hobble their effectiveness. If our colleagues want the United States to cling to a 1930s mentality that will make it uncompetitive in the world economy, they will vote in favor of the Dorgan amendment. We will vote against it.